

HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.28427 of 1998

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Date: September 26, 2007

Between:

Mohammad Nawab Pasha.

... Petitioner

And

1. The State of A.P. rep. by its

Principal Secretary, Panchayat Raj
and Rural Development Department,
Secretariat, Hyderabad and 2 others.

... Respondents

* * *

ORDER:

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This writ petition has been instituted by a Group Executive Officer-cum-Development Officer, Grade-I of Khammam District, questioning legality and validity of the orders passed by the State Government through their G.O.Ms.No.485 ordering the system of appointing Group Executive Officers to the non-notified Gram Panchayat to be withdrawn with immediate effect.

2. The writ petitioner contends that the impugned order passed by the State Government is in the teeth of the provisions contained in Sections 30 and 31 of the Andhra Pradesh Gram Panchayat Act, 1964 and therefore it is *ultra vires*. The writ petitioner does not dispute that for a set of gram panchayats he has been appointed as a Group Executive Officer. In view of the controversy raised in the writ petition it is only appropriate to examine some of the important provisions contained in the Andhra Pradesh Gram Panchayats Act, 1964. Various expressions found in the Act have been defined in Section 2. The expressions 'executive authority' and 'executive officer' have been defined in the following manner. Sub-sections 9 and 10 of

Section 2 of the Act read as hereunder:-

Sec.2. Definitions:- In this act, unless the context otherwise requires-

9) 'election authority' means—

i) in the case of a gram panchayat or a group of gram panchayats having an executive officer, the executive officer, and if there is no executive officer in charge, the Sarpanch of the gram panchayat;

ii) in the case of any other gram panchayat, the Sarpanch thereof;

10) 'executive officer' means the executive officer of a gram panchayat or a group of gram panchayats;

The expression 'Gram Panchayat' has been defined in sub-section 13 of Section 2 as under.

'Gram Panchayat' means the body constituted for the local administration of a village under this Act (and includes a special grade gram panchayat;)

3. A perusal of the aforementioned expressions leaves no manner of doubt that the executive authority of a gram panchayat or a group of gram panchayats lies with the executive officer and if there is no executive officer in charge thereof, it is the sarpanch of the gram panchayat with whom the executive authority vests. It is also beyond doubt that the gram panchayat is a body constituted for administration of a local area constituted as such in terms of Section 4 of the Act.

4. Section 25 of the Act had conferred certain powers and functions on the sarpanch of the gram panchayat, importantly, the power to convene meetings of the gram panchayats and Gram Sabha and to exercise administrative control over the executive officer, if there is one, for the purpose of implementation of the resolutions of the gram

panchayat or any committee thereof are some of the various functions liable to be performed by the sarpanch. The legislature has advisedly used the expressions “if there is one” in clause (d) of sub-section 1 of Section 25 of the Act. It is thus abundantly clear that the functions of the sarpanch, wherever there is no executive officer appointed also encompass such of the functions, which are liable to be performed by such an executive officer. Therefore, Section 25 has got to be read along with Sections 30 and 31. All that Section 30 would disclose is that a whole time or a part time executive officer shall be appointed by the commissioner for any gram panchayat or for any group of contiguous gram panchayats which may be notified by him in this behalf. Section 31 has detailed the functions of executive officer who shall ordinarily attend the meetings of the gram panchayat or any committee thereof and shall be entitled to take part in the discussions thereof, but he shall not be entitled to vote or to move any resolution. In contrast Section 32 of the Act has given in detail the functions of executive authority, thus, as noticed supra the functions of executive authority are liable to be performed by sarpanch of the gram panchayat where there is no executive officer appointed by the commissioner in terms of section 30.

5. A compendious reading of all these aforementioned provisions leaves no doubt that the legislature had advisedly used the expressions such as “and if there is no executive officer in-charge” in sub-section 9 of Section 2 and “if there is one” in clause (d) of sub-section 1 of Section 25 and distinctly and separately describing the functions to be performed by executive authority under Section 32 in contrast to the functions of executive officers, pointing out that there is no compulsion to appoint an executive officer for every gram panchayat or for any contiguous group of gram panchayats. It is therefore manifestly clear that no person can compel the State or its agency such as Commissioner of Panchayat Raj to appoint executive

officer for every gram panchayat or group of panchayats. It is in the wisdom of the legislature that it conferred a discretion to be exercised with reference to various other important facets including the economic viability of sanctioning and appointing executive officer for a gram panchayat. The body constituted called gram panchayat had to locally administer and perform several important duties which are for the common good and well being of its residents. Only in cases where appointment of executive officer is otherwise considered as essential and required, such an exercise can be indulged in by the State and compulsion cannot be thrust upon it invariably to appoint an executive officer for every gram panchayat or for a group of contiguous gram panchayats by the State. In fact, I am supported by a decision rendered by a Division Bench of this Court in W.A.No.632 of 1998 and batch decided on 12th July 1999.

6. I, therefore, find no merit in this writ petition and it is accordingly dismissed, but however, without costs.

(NOOTY RAMAMOHANA RAO, J)

Date: September 26, 2007.
BSB